

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**

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July 12, 2023

TO PARTIES OF RECORD IN CASE 17-09-023:

This proceeding was filed on September 29, 2017, and is assigned to Commissioner Houck and Administrative Law Judge (ALJ) Kline. This is the decision of the Presiding Officer, ALJ Kline.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (*i.e.*, the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (*See*, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:mph

Attachment

ALJ/POD-ZK1/mph

Decision PRESIDING OFFICER'S DECISION (Mailed 7/12/2023)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Bell Telephone Co. d/b/a
AT&T California (U1001C),

Complainant,

vs.

Case 17-09-023

VAYA Telecom, Inc. (U7122C),

Defendant.

AT&T California (U1001C), Complainant,
VAYA Telecom, Inc. (U7122C), Defendant.

**PRESIDING OFFICER'S DECISION REGARDING THE ORDER TO SHOW
CAUSE AGAINST VAYA TELECOM, INCORPORATED**

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**PRESIDING OFFICER'S DECISION REGARDING THE ORDER TO SHOW
CAUSE AGAINST VAYA TELECOM, INCORPORATED**

Summary

This decision finds that Vaya Telecom Inc. (Vaya), O1 Communications, and O1 Holding Company will be jointly liable for Vaya's obligations pursuant to Decision (D.) 20-09-029 and must pay the amount owed within 60 days of the issuance date of this decision. It also finds that Vaya was operated as a single business enterprise with O1 Communications and that O1 Holding Company was an alter ego of Vaya.

This decision further finds that Vaya committed a violation of Rule 1.1 of the Commission's Rules of Practice and Procedure for intentionally misleading the California Public Utilities Commission regarding Vaya's operations and finances. Vaya is ordered to pay a penalty of \$12,000 for violating Rule 1.1 within 60 days of the issuance date of this decision, for which Vaya, O1 Communications, and O1 Holding Company shall be jointly liable.

Vaya's CPCN license, U7122, will be revoked 60 days after the issuance date of this decision. This proceeding is closed.

1. Factual Background

In the second phase of this proceeding, the California Public Utilities Commission (Commission) issued Decision (D.) 20-09-029, awarding \$3,364,692 in reparations to Pacific Bell Telephone Company doing business as AT&T California (AT&T California) and assessing a \$40,000 penalty on Vaya Telecom, Inc., payable to the Commission for deposit into the General Fund. The deadline for Vaya's compliance with these payment amounts was November 1, 2020.

Vaya failed to pay the amounts owed in D.20-09-029 and took actions contrary to future compliance. On November 30, 2020, Vaya submitted a Tier 2

advice letter,¹ to the Commission's Communications Division requesting to surrender its certificate of public convenience and necessity (CPCN), license U7122C.² The Tier 2 advice letter indicated that Vaya had transferred all of its customers to other carriers and was no longer operating. Furthermore, Vaya filed dissolution papers with the California Secretary of State in December 2020.³

2. Procedural Background

On March 15, 2021, the assigned Commissioner issued the *Assigned Commissioner's Ruling Amending the Scope of Proceeding to Include an OSC Against Vaya* (OSC Scoping Ruling) so Vaya could be given an opportunity to be heard and to explain why it should not be penalized for failure to comply with D.20-09-029. The OSC also considered whether the Commission should hold Vaya's affiliates, O1 Communications, Incorporated (O1 Communications) and potentially O1 Services, LLC, liable for Vaya's compliance obligations under D.20-09-029 as Vaya's alter egos. Concurrently, the assigned ALJ issued the *ALJ's Ruling Regarding Order to Show Cause*, setting an OSC hearing for May 19, 2021.

Vaya filed a response to the OSC on April 9, 2021, along with a concurrent motion for leave to seal a portion of its response as confidential. AT&T California filed a reply to Vaya's response on April 30, 2021, along with a concurrent motion for leave to seal a portion of its response as confidential. On May 11, 2021, the assigned Administrative Law Judge (ALJ) issued an e-mail

¹ Advice Letter (AL) number (no.) 7,

² On December 14, 2020, AT&T California sent a response to Vaya's AL no. 7, noting there was an outstanding obligation pursuant to D.20-09-029. On December 3, 2021, the Communications Division rejected the Advice letter due to outstanding compliance with D.20-09-029 and the related Order to Show Cause.

³ AT&T California Verified Reply Statement (Apr. 30, 2021) at 1.

ruling providing remote hearing access instructions, witness attestations, and general attendance guidance for the OSC hearing.

An OSC hearing was held on May 19, 2021. At the OSC hearing, North County Communications Corporation of California's (NCC) made an oral motion for party status which was granted over Vaya's objection. Vaya's counsel served a large number of exhibits, both from Vaya and O1 Communications, on the afternoon of May 18, 2021, the OSC hearing was continued to allow opportunity for review of Vaya's additional exhibits. A second day of the OSC hearing was tentatively set for June 21, 2021.

In response to the assigned ALJ's request for Vaya to provide documents verifying Vaya's finances at the May 19, 2021 OSC hearing, Vaya provided four years of tax returns, from 2016-2019, and three years of bank statements to the assigned ALJ and to AT&T California. Vaya's tax returns for 2016 were solely filed by Vaya, while the tax returns for 2017 to 2019 were filed by O1 Holding Company, they included Vaya, O1 Communications, O1 Services LLC, and several other entities affiliated with O1 Holding Company. None of the tax returns included any attachments; nor did they show individual earnings for the affiliated entities.

By e-mail ruling, dated July 9, 2021, the second day of the OSC hearing was reset from June 21, 2021 to August 18, 2021, to accommodate AT&T California's request to conduct additional discovery. On July 19, 2021, the Commission denied rehearing of D.20-09-029.⁴ On July 20, 2021, AT&T California filed a motion to suspend the OSC hearing scheduled for August 18, 2021 (Motion to Suspend OSC), indicating AT&T California had filed a complaint

⁴ D.21-07-034.

against Vaya, on July 19, 2021, in the Superior Court of San Francisco to seek a judicial judgment that AT&T California could directly enforce pursuant to California's judgment collection law. AT&T California requested the suspension of these proceedings in order "to avoid a duplicity of hearings and multiplicity of proceedings."⁵ On August 3, 2021, Vaya filed a response which supported AT&T California's Motion to Suspend OSC. On August 10, 2021, ALJ Kline denied AT&T California's motion to suspend the OSC.

On August 6, 2021, AT&T California filed a *Motion to Compel Further Production of Documents from Defendant Vaya Regarding OSC* (Motion to Compel). In its Motion to Compel, AT&T California requested that Vaya submit attachments that were not provided with the tax returns dated 2016-2020, including at least six separate attachments in Vaya's 2016 tax return, and additional attachments in the 2017-2020 tax returns from O1 Holding Company.⁶ AT&T California also sought an order compelling Vaya to produce documents in response to AT&T California's first set of data requests regarding the OSC, specifically the last five years of financial statements, including income statements, balance sheets, and cash flow statements.⁷

On August 9, 2021, Vaya filed the *Motion to Require AT&T California to Amend its Motion to Compel to Conform with the Commission's Rules of Practice and Procedure* (Motion for AT&T to Amend its Motion to Compel), arguing that AT&T California's Motion to Compel failed to follow Rule 1.1 of the

⁵ Motion to Suspend OSC at 1.

⁶ Motion to Compel at 5.

⁷ Motion to Compel at 2.

Commission's Rules of Practice and Procedure⁸ that requires all parties to "maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges and never to mislead the Commission or its staff by an artifice or false statement of fact or law" because it was dismissive of the assigned ALJ's handling of two record requests and misleading, failing to disclose that Vaya agreed to provide a supplemental response to the first set of data requests. Vaya also argued that AT&T California's motion to immediately produce additional tax documents was in disregard or ignorant of Rule 11.3(b) of the Commission's Rules of Practice and Procedure (allowing Vaya ten days to respond) by failing to file a motion to shorten time. Therefore, Vaya requested that AT&T California amend its motion to remove the allegation that Vaya refused to respond to AT&T's request for additional tax documents.

On August 9, 2021, Vaya also filed the *Motion to Shorten Time for Responses to Vaya's Motion to Require AT&T California to Amend Motion to Compel to Conform with Commission Rules of Practice and Procedure* (Motion to Shorten Time to Reply), wherein Vaya requested that the Commission shorten AT&T California's time to respond to Vaya's aforementioned motion to four days, or by August 13, 2021, in advance of the OSC hearing on August 18, 2021.

On August 10, 2021, the assigned ALJ issued a ruling denying AT&T California's Motion to Suspend the OSC hearing. On August 11, 2021, the assigned ALJ issued an e-mail ruling directed Vaya to serve the missing attachments by 5:00 p.m. on August 13, 2021 (ALJ Ruling Directing Production of Tax Return Attachments). On August 11, 2021, Vaya also filed the *Motion for*

⁸ All references to "Rule" or "Rules" herein shall refer to the Commission's Rules of Practice and Procedure.

Reconsideration of Ruling Granting Party Status to NCC (Vaya Motion to Reconsider NCC's Party Status).

On August 13, 2021, Vaya filed an *Emergency Motion for Reconsideration of Ruling Requiring Disclosure of Privileged Tax Documents* (Vaya Motion for Reconsideration of ALJ Ruling Directing Production of Tax Return Attachments). On August 13, 2021, AT&T California filed the *Reply of AT&T California in Support of Motion to Compel Further Production of Documents from Defendant Vaya Regarding OSC* (Response to Emergency Motion for Reconsideration), wherein AT&T California responded to Vaya's Emergency Motion for Reconsideration as a response to its Motion to Compel.⁹

By e-mail, dated August 13, 2021, the assigned ALJ suspended Vaya's requirement to provide the tax document attachments, for further discussion at the continued OSC hearing to be held on August 18, 2021. On August 13, 2021, ALJ Kline also granted Vaya's Motion to Reconsider NCC's Party Status.

On August 16, 2021, Vaya filed the *Vaya Opposition to AT&T California Motion to Compel Tax Documents on the Basis of Privilege under California Law* (Response to Motion to Compel). On the same day, Vaya also file a petition for writ of review of D.20-09-029 and D.21-07-034 under Pub. Util. Code section 1756 in the California Court of Appeals, Third Appellate District.

The OSC hearing was continued on August 18, 2021. On the second day of the OSC hearing, the assigned ALJ and Vaya discussed the possibility that Vaya could provide alternative documents to verify its financial position, rather than provide the attachments to the tax returns. Vaya agreed to provide additional

⁹ AT&T California was granted permission by the assigned ALJ to file this document at the August 18, 2021 hearing. This filing, though identified by AT&T California as a reply, is more properly classified as a response to the Vaya's Emergency Motion for Reconsideration since Vaya later filed a response to AT&T California's Motion to Compel on August 16, 2021.

financial documents by August 25, 2021. The assigned ALJ deferred ruling on the admission of AT&T California's oral motion to admit exhibit ATT-04-C, which consisted of Vaya's tax returns, for the 2016-2019 calendar years, and monthly bank account statements, for the years 2017 through 2019, into the evidentiary record of the proceeding until after Vaya had an opportunity to offer additional exhibits into evidence.

On August 25, 2021, Vaya sent an e-mail to the assigned ALJ, copying the service list, in which Vaya indicated it could provide the additional financial documents by September 13, 2021. On September 13, 2021, Vaya served additional exhibits containing Vaya's financial activity from 2008 to 2016 by e-mail.

On September 23, 2021, the assigned *ALJ's Ruling Admitting One Exhibit into the Evidentiary Record; Granting AT&T California's Motion to Compel, in part; Requiring Joinder of Additional Parties; and Directing Parties to Mail Hard Copies of Exhibits* (ALJ Ruling Granting Motion to Compel): (1) admitted Vaya's tax returns into the record, (2) required joinder of O1 Holding Company and O1 Communications as parties to the proceeding, (3) directed Vaya to produce the schedules and attachment to its 2017, 2018 and 2019 tax results which were relevant to the disclosure of Vaya's finances, (4) indicated that Vaya's transfer of control to O1 Holding company in 2017 without Commission approval appeared to violate Public Utilities Code section 854, (5) and directing parties to serve three hard copies of their exhibits.

On October 6, 2021, ALJ Kline noticed the parties that NCC's motion for reconsideration of NCC's removal as a party from this proceeding, dated September 23, 2021, as well as Vaya's response to NCC's motion for reconsideration of NCC's removal as a party from this proceeding were removed

from the docket card for the proceeding, since NCC could not file a motion in the proceeding pursuant to Article 11 of the Rules of Practice and procedure unless it is accompanied by a motion for party status pursuant to Rule 1.4.

On October 13, 2021, Vaya filed the Motion for Reconsideration of ALJ's Ruling Admitting One Exhibit into the Evidentiary Record; Granting AT&T California's Motion to Compel, in Part; and Requiring Joinder of Parties (Motion for Reconsideration of September ALJ Ruling).

On October 26, 2021, joinder of O1 Communications and O1 Holding Company as parties to the proceeding was affirmed by the *Assigned Commissioner's Ruling Amending Scope of the Order to Show Cause Against Vaya Telecom, Incorporated* (Amended OSC Scoping Ruling), which also added a violation of Rule 1.1 to the scope of the proceeding and set a third day of the OSC hearing for December 17, 2021.

On October 28, 2021, AT&T California filed a response opposing Vaya's Motion for Reconsideration of September ALJ Ruling. On October 29, 2021, Vaya's motion for reconsideration of the ALJ Ruling for Reconsideration of September ALJ Ruling, dated September 23, 2021, was denied by e-mail ruling.

On November 29, 2021, O1 Holding Company, Vaya Telecom, Inc. and O1 Communications, Inc. jointly filed a response to the Amended OSC Scoping Ruling. On November 30, 2021, O1 Holding Company, Vaya Telecom, Inc., and O1 Communications, Inc. jointly filed a supplemental response to the Amended OSC Scoping Ruling.

On November 2, 2021, the OSC hearing was rescheduled from December 17, 2021 to December 13, 2021, at Vaya's request. On December 2, 2021, ALJ Kline issued a ruling providing remote hearing access instructions and general guidance for the December 13, 2021 OSC hearing. On December 3, 2021,

Vaya filed a motion for interlocutory review of the ALJ Ruling Granting Motion to Compel, dated September 23, 2021. On December 10, 2021, AT&T California filed: (1) a reply to the O1 Communications, O1 Holding Company, and Vaya's joint response to the Amended OSC Scoping Ruling, (2) a motion for leave to file portions of its reply under seal, and (3) a reply to Vaya's motion for interlocutory review of the ALJ Ruling Granting Motion to Compel.

The continued OSC hearing was held on December 13, 2021. On December 17, 2021, Vaya filed a motion for leave to place six exhibits into the evidentiary record. On December 31, 2021, Vaya filed a surreply to the Amended OSC Scoping Ruling. On January 21, 2022, AT&T California filed a response to Vaya's surreply to the Amended OSC Scoping Ruling, along with a motion for confidential treatment of portions of its response to Vaya's surreply to the Amended OSC Scoping Ruling.

On January 31, 2022, the appellate court denied Vaya's petition for review of D.20-09-029 and D.21-07-034. On February 7, 2022, Vaya filed a petition for review of D.20-09-029 and D.21-07-034 in the California Supreme Court.¹⁰ On April 13, 2022, the California Supreme Court denied Vaya's petition for review.

On March 17, 2023, the assigned ALJ filed a notice of *ex parte* communications. On March 27, 2023, an ALJ ruling admitted six exhibits into the record of this proceeding and sealed confidential portions of six exhibits and other filings. The matter was submitted on March 27, 2023.

On March 28, 2023, Vaya filed a motion for disqualification of the assigned ALJ for cause. On April 3, 2023, the Chief ALJ issued a ruling denying Vaya's motion for disqualification of the assigned ALJ. On April 10, 2023, Vaya's

¹⁰ California Supreme Court Case # S273055.

motion for interlocutory review was rejected by assigned Commissioner's ruling. On April 13, 2023, Vaya filed a motion for official notice of San Diego Superior Court register of actions.

3. Jurisdiction

Under the Telecommunications Act of 1996, the Commission has jurisdiction to arbitrate, interpret, and enforce interconnection disputes, including the contractual charges arising out of interconnection agreements (ICAs). The Commission also has jurisdiction to enforce the Commission's decisions through an OSC pursuant to Public Utilities Code Sections 701, 2107, 2108, and 2113.

Prior to March 6, 2017, the Commission regulated Vaya and O1 Communications as telephone corporations pursuant to the obligations granted in their respective CPCNs. After March 6, 2017, the Commission also regulated O1 Holding Company, after the Commission's Communications Division granted the request to transfer control of both Vaya and O1 Communications to O1 Holding Company. The CPCN license of O1 Communications (U6065C) was revoked by the Commission's Communications Division by Resolution T-17765, effective July 1, 2022, for failure to comply with its reporting requirements or pay the penalty imposed in citation CD-2021-11-030.

The Commission has the authority to pierce the corporate veil and apply the alter ego doctrine or the single business enterprise rule, when the facts support it, to secure equitable restitution to victims.¹¹ The Commission engages

¹¹ *In re Animal Foods Co. (1976)*, 81 CPUC 26; D.01-04-035; D.14-08-033.

in the same analysis as California courts when deciding to pierce the corporate veil.¹²

4. Issues Before the Commission

The issues before the Commission are as follows:

1. Whether Vaya should be fined or otherwise penalized for failure to comply with D.20-09-029.
2. Whether the Commission should pierce Vaya's corporate veil and find it jointly liable with its holding company or any of its affiliates.
3. Whether Vaya violated Rule 1.1 by making false or misleading statements during the course of this proceeding.

5. Vaya's Assertion of Noncompliance Based on Insolvency

The purpose of this OSC is to determine why Vaya has not complied with D.20-09-029, which imposed a restitution and a penalty for Vaya's misrouting of interLATA traffic. The OSC asked Vaya to explain why it should not be fined or further penalized for not complying with D.20-09-029.¹³

In response to the OSC, Vaya argued that it could not comply with D.20-09-029 because it "has no money."¹⁴ Vaya represented that its gross margins were very low, with \$1,000,000 in revenue creating a gross margin of \$60,000 to \$80,000, which is then used to cover operating expenses.¹⁵ In its verified statement, Vaya provided a specific amount of revenue and a

¹² *In re Titans*, D.01-04-035 at 88-89.

¹³ OSC (Mar. 15, 2021) at 1.

¹⁴ Vaya Verified Response to OSC (Apr. 9, 2021) at 1.

¹⁵ Vaya Verified Response to OSC (Apr. 9, 2021) at 9.

cumulative gross margin for the five-year period from 2015-2019.¹⁶ With such as small net revenue, Vaya argued that it “has no financial resources at all to pay the damages award or the fine.”

6. Extending Liability to O1 Holding Company and O1 Communications

Based on Vaya’s representations during the course of Phase 1 and 2 of this complaint proceeding, the OSC identified a potential need to extend Vaya’s liabilities pursuant to D.20-09-029 to its affiliates based on, among other things, its identical officers, employees, intermingled operations, and representation by the same counsel with its affiliates.¹⁷ The OSC was later amended to add joinder for O1 Communications, a sister company of Vaya, and O1 Holding Company, Vaya’s parent company, to assess whether O1 Communications or O1 Holding Company should be jointly liable for Vaya’s obligations in D.20-09-029.

We start our inquiry of the Commission’s need to extend Vaya’s liability with a summary of joint liability by piercing the corporate veil, which initially allowed liability of a corporation to extend to its officers and stockholders.

While it is the general rule that a corporation is an entity separate and distinct from its stockholders, with separate, distinct liabilities and obligations, there is a well-recognized and firmly settled exception to this general rule, that, when necessary to redress fraud, protect the rights of third persons, or prevent a palpable injustice, the law and equity will intervene and cast aside the legal fiction of the independent corporate existence, as distinguished from those who

¹⁶ Vaya Verified Response to OSC (Apr. 9, 2021) at 9 (confidential version).

¹⁷ The OSC originally named O1 Communications and potentially O1 Services, LLC. O1 Services LLC was a contract management company, and affiliate of Vaya, which began operations in 2010 and terminated operations in December 2020.

hold and own corporate capital stock, and deal with the corporation and stockholders as identical entities with identical duties.¹⁸

Under alter ego doctrine, liability was further extended to allow for a corporation's veil to be pierced to hold other entities liable for the corporation's actions when: (1) "there be such a unity of interest and ownership between the corporation and the individuals or other corporation that the separate entities cease to exist, and [(2)] that an inequitable result would follow if the doctrine were not applied."¹⁹ The alter ego doctrine applies to parent companies, such as O1 Holding Company.

The single business enterprise rule, an extension of the alter ego doctrine, applies to sister companies, such as O1 Communications. The single business enterprise rule applies when evidence supports a finding that one corporate entity "is so organized and controlled, and its affairs are so conducted, as to make it merely an instrumentality, agency, conduit, or adjunct of another corporation."²⁰ The application of the single enterprise rule also requires a finding of that "adherence to the fiction of a separate existence of the corporation would promote injustice or bring about inequitable results."²¹ Where the two corporations, despite their separate legal existence, are engaged in a single enterprise, and that enterprise incurs an obligation, both corporations will be held liable.²²

¹⁸ *Wenban Estate, Inc. v. Hewlett* (1924), 193 Cal. 675, 696.

¹⁹ D.01-04-035 at 88-89, 15 Cal. Jur. 3d (rev), Corporations, § 33.

²⁰ *McLoughlin v. L. Bloom Sons Co. Inc.*, 206 Cal. App. 2d 848, 851-852.

²¹ *Las Palmas Assoc. v. Las Palmas Center Assoc.*, 235 Cal. App. 3d 1220, 1250 (1991) citing *Pan Pacific Sash & Door Co. v. Greendale Park, Inc.*, 166 Cal. App. 2d 652, 658-659.

²² *Pan Pacific Sash & Door Co. v. Greendale Park, Inc.*, 166 Cal. App. 2d 652, 659.

6.1. Assessing Separate Legal Existence

Courts consider many factors when assessing whether a corporation has a separate legal existence, used for both the alter ego doctrine and the single business enterprise rule.²³ Many of these factors overlap in various aspects, and it is not necessary to evaluate each factor to make a finding regarding the separate legal existence of entities. The most critical factors are failure to maintain corporate formalities, commingling of funds, and undercapitalization.²⁴ The assessment of a separate legal existence is fact specific and requires sufficient evidence to show no legal separation exists. Not all factors must be present for a court to find alter ego liability or single business enterprise liability.

²³ Factors courts have considered include: (1) commingling of funds and other assets; (2) failure to segregate funds of the separate entities; (3) the unauthorized diversion of corporate funds or assets to other than corporate uses; (4) the treatment of an individual of the assets of the corporation as his own; (5) the failure to obtain authority to issue stock or to subscribe to or issue the same; (6) the holding out by an individual that he is personally liable for the debts of the corporation; (7) the failure to maintain minutes or adequate corporate records; (8) the confusion of the records of separate entities; (9) the identical equitable ownership in the two entities; (10) the identification of the equitable owners thereof with the domination and control of the two entities; (11) identification of the directors or officers of the two entities in the responsible supervision and management; (12) sole ownership of all of the stock in a corporation by one individual or the members of a family; (13) the use of the same office or business location; (14) the employment of the same employees and/or attorney; (15) the failure to adequately capitalize a corporation; (16) the total absence of corporate assets and undercapitalization; (17) the use of a corporate as a mere shell, instrumentality or conduit of a single venture or the business of an individual or another corporation; (18) the concealment and misrepresentation of the identity of the responsible ownership, management, and financial interest, or concealment of personal business activities; (19) the disregard of legal formalities and the failure to maintain arm's length relationships among related entities; (20) the use of the corporate entity to procure labor, services, or merchandise from another person or entity; and (21) the diversion of assets from a corporation or stockholder or other person or entity to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another. (*Associated Vendors, Inc. v. Oakland Meat Company*, 210 Cal. App. 2d 825, 836-840.)

²⁴ Vaya Surreply at 13, citing *Tomaselli v. Transamerica Ins. Co.*, 25 Cal.App.4th 1269,1285 (1994).

6.1.1. Identical Officers, Corporate Office Location, and Representation by Counsel

During the OSC, there was no dispute that Vaya, O1 Communications, and O1 Holdings share corporate officers and offices. The declaration of Brad Jenkins states:

I, Brad Jenkins declare: (1) I am Chief Executive Officer (“CEO”) of O1 Holdings, Inc., the parent company of [Vaya], [O1] and [O1 Services, Inc]. As CEO, I oversee issues affecting O1 Holding and its subsidiaries, including the networks, operations, employees, and with Jim Beausoleil, Chief Financial Officer, I oversee revenue, costs and expenses.²⁵

Similarly, there is no dispute that O1 Communications, O1 Holding Company, and Vaya were all represented by the same counsel. Finally, there is no dispute regarding the shared use of office space, which the O1 affiliated entities indicate served the purpose of administrative efficiency. While the use of the same officers, offices, and counsel are several factors used to assess alter ego liability, the presence of these factors weighs in favor of a finding of a unity of interest and purpose between Vaya and O1 Holding Company and O1 Communications.

6.1.2. Undercapitalization

Vaya represented that, while it was adequately capitalized to operate as a telecommunications carrier and pay its bills as they came due during the 2015-2019 Record Period, D.19-08-028’s order requiring Vaya to route traffic through Feature Group D facilities rather than meet point trunks and D.20-09-029’s imposition of restitution and penalties led to Vaya’s shutting down operations in 2019.²⁶

²⁵ Vaya Exhibit VA0004 at 2.

²⁶ Vaya Verified Response to OSC (Apr. 9, 2021) at 10-11.

Vaya provided financial information supporting its operations during the 2015-2019 Record Period as follows: (1) documents establishing a bank account for Vaya in June 2008 satisfying the minimum CPCN financial requirement,²⁷ (2) a bank statement from Vaya's bank account in November 2008 showing a negligible balance,²⁸ (3) summary tables of Vaya's financials from 2010 through 2019,²⁹ (4) a graph of Vaya's bank account activity graph,³⁰ (5) a summary of check transactions by month,³¹ (6) Vaya's bank statements from 2010 to 2016,³² and (7) an invoice from O1 Communications to Vaya, dated December 14, 2014.³³ However, the financial documents Vaya provided only show active balance transfers between 2010 and 2015, with a few minimal but mostly no transactions occurring after 2015.³⁴ Vaya's bank account activity showed that between 2010 and 2015, Vaya's monthly credits and debits roughly balanced out for each month. Vaya did not maintain a separate bank account after December 2016.

Vaya's financial documentation does not support the operation of any credible business during the 2015-2019 Record Period, Competitive Local Exchange Carrier (CLEC) or otherwise. Vaya's minimal balance after 2015 and lack of a bank account after 2016 also does not support Vaya's assertion that, but for Commission decisions imposing liability for Vaya's breach of its ICA with

²⁷ Vaya Exhibit VA0008-C.

²⁸ Vaya Exhibit VA0009-C.

²⁹ Vaya Exhibit VA0021-C.

³⁰ Vaya Exhibit VA0022-C.

³¹ Vaya Exhibit VA0023-C.

³² Vaya Exhibit VA0024-C.

³³ Vaya Exhibit VA0025-C.

³⁴ Vaya Exhibits VA0022-C and VA0026-C.

AT&T California, Vaya was adequately capitalized and able to pay bills as they came due. From inception through 2016, Vaya's finances were kept at a minimum level so that it could only meet its monthly obligations. After 2016, Vaya had no finances with which to satisfy its debts, yet continued operations. Accordingly, this decision find that Vaya was undercapitalized during the Record Period, which weighs against a finding that Vaya has a separate legal existence.

6.1.3. Comingling of Funds

Vaya does not deny that it commingled funds. Rather, Vaya argues that it did not "illegitimately" comeingle funds between Vaya and O1 Services.³⁵ Vaya, however, concedes that "affiliates stepped in to pay Vaya's expenses, including interconnection charges to [AT&T California], after Vaya was unable to do so."³⁶

As AT&T California correctly points out, the factor to be assessed is the comingling of funds and funds do not need to be comingled "illegitimately" when assessing the unity of operations. As discussed in Section 6.1.2, above, Vaya had minimal to no financial transactions after 2015. Therefore, whatever funds Vaya operated with were fully comingled with the other entities' operations.

Vaya provided a separate tax return for 2016 and portions of the tax returns for O1 Holding Company, from 2017 through 2019. O1 Holding company's tax returns also included its affiliates, such as Vaya and O1 Communications. While such filings can be used to delineate separate funds of separate entities, Vaya failed to do so by omitting the schedules and

³⁵ Vaya Telecom, Inc. Verified Response to Order to Show Cause at 11.

³⁶ Vaya aur-reply at 8-9.

attachments for the tax returns that would allow for Vaya's funds to be clearly separated from O1 Holdings' other subsidiaries. Vaya, O1 Communications, and O1 Holding company refused to provide additional documents supporting the separate earnings of the three entities. Upon consideration, we find that Vaya comingled funds, which weighs against a finding that Vaya has a separate legal existence.

6.1.4. Control and Operation of Vaya by O1 Communications

To support its assertion that Vaya operated as a separate corporate entity, Vaya provided a Communications Confirmation Agreement between Vaya and O1 Communications, which detailed the services O1 Communications agreed to provide for Vaya.³⁷ Vaya also provided an Administrative Services Agreement (ASA) between Vaya and O1 Communications, which detailed operations O1 Communications agreed to provide to Vaya for a monthly service fee.³⁸ Vaya claims that it "compensated O1 Communications for the items for the majority of its existence either by writing a check or through an offset arrangement."³⁹ Finally, Vaya also provided one invoice from O1 Communications, dated December 14, 2014, for the services under the ASA.⁴⁰

AT&T California asserts that the alleged financial separation by Vaya is a ruse and the ASA was designed to create the illusion of an arms-length relationship between Vaya and [O1 Communications], to cover up the fact that it is not an actual, separate company (since it has no separate office, no separate

³⁷ Vaya Exhibit VA0017-C.

³⁸ Vaya Exhibit VA0018-C.

³⁹ Vaya Surreply at 14.

⁴⁰ Vaya Exhibit VA0026-C.

ownership, and no actual employees, and as far as we can ascertain, has never actually paid its own bills).⁴¹

We agree with AT&T California that the financial information provided by Vaya does not support Mr. Jenkins' initial assertions that Vaya paid O1 Communications \$20,000 a month to operate Vaya.⁴² We reviewed the bank statements from 2010-2015 and found only three withdrawals that could correspond to payments pursuant to the ASA, with one payment corresponding to a payment period provided in the invoice from O1 Communications in December 2014.⁴³ Mr. Jenkins also admitted that Vaya made less than six payments under the ASA.⁴⁴

We also find sufficient evidence in the record to show that O1 Communications controlled and operated Vaya. James Mertz, an employee of O1 Communications, testified as an expert witness to explain Vaya's operations for the duration of this complaint. It was later confirmed that Vaya had no employees,⁴⁵ making it more likely that Vaya did not operate as a separate entity.

We also agree with AT&T California that Vaya "has repeatedly offered testimony and evidence showing that Vaya often piggybacks on the business operations and contracts of O1 Communications and O1 Services."⁴⁶ Vaya provided Letters of Authorization and invoices between third parties and Vaya's

⁴¹ AT&T California Response to Surreply at 8.

⁴² Vaya Exhibits VA00026-C,

⁴³ Vaya Exhibits VA00024-C, VA00025-C.

⁴⁴ RT 106:5-109:15.

⁴⁵ RT 109:16-20.

⁴⁶ AT&T California Reply to OSC (Apr. 30, 2021) at 5.

affiliates, not Vaya, as proof its operations.⁴⁷ Vaya also provided a spreadsheet of third party transport purchased by Vaya's affiliates that were used by both O1 Communications and Vaya to connect to AT&T California's serving wire centers where AT&T California's tandems are located.⁴⁸ Upon consideration, we find sufficient record evidence to show that Vaya was controlled and operated by O1 Communications during the Record Period.

6.1.5. Maintenance of Corporate Formalities

Vaya maintains it has a separate corporate existence from O1 Communications and O1 Holding Company, relying mostly on documents supporting the maintenance of corporate formalities. Vaya's evidence of its separate corporate existence, undisputed by parties, includes the following: (1) Vaya's articles of incorporation from the California Secretary of State, dated June 12, 2008;⁴⁹ (2) Vaya's IRS-assigned employer identification number (EIN), dated June 26, 2008;⁵⁰ (3) forms showing the establishment of a bank account for Vaya, dated June 27, 2008;⁵¹ (4) D.09-01-012 granting Vaya a CPCN on January 30, 2009;⁵² (5) a letter to Vaya from Telecordia assigning an Access Customer Name Abbreviation (ACNA) number on February 3, 2009;⁵³ (6) AT&T's and Vaya's ICA agreement, dated June 19, 2009;⁵⁴ (7) a letter showing Vaya's Common Language Location Identification (CLLI) code established by

⁴⁷ Vaya Exhibit JM-24-A to JM-24-H. JM-25-E.

⁴⁸ Vaya Exhibit JM-23.

⁴⁹ Vaya Exhibit VA0006.

⁵⁰ Vaya Exhibit VA0007-C.

⁵¹ Vaya Exhibit VA0008-C.

⁵² Vaya Exhibit VA0010.

⁵³ Vaya Exhibit VA0011.

⁵⁴ Vaya Exhibit VA0013.

Telecordia, dated July 7, 2009;⁵⁵ (8) Vaya's CPCN application, dated July 2, 2008;⁵⁶ (9) Vaya's Bylaws, dated September 1, 2010;⁵⁷ (10) Vaya's Internal Revenue Service (IRS) filing for a Small Business Corporation election, dated September 7, 2010.⁵⁸

Similarly, O1 Communications provided the following evidence, also undisputed by parties, to show it maintained corporate formalities: (1) articles of incorporation for Option One Communications, dated June 26, 1998;⁵⁹ (2) corporate bylaws for Option One Communications, dated June 26, 1998;⁶⁰ (3) D.98-09-66 granting Option One Communications a CPCN, dated September 17, 1998;⁶¹ (4) IRS EIN for Option One Communications, dated October 23, 1998;⁶² (5) amended articles of incorporation for O1 Communications, dated June 29, 1998;⁶³ (6) IRS Notice of Name Change from Option One Communications to O1 Communications, dated October 22, 1999;⁶⁴ (7) Small Business Corporation (S Corp) election for O1 Communications, dated

⁵⁵ Vaya Exhibit VA0014.

⁵⁶ Vaya Exhibit VA0015.

⁵⁷ Vaya Exhibit VA0016-C.

⁵⁸ Vaya Exhibit VA0019-C.

⁵⁹ O1 Communications Exhibit O10002.

⁶⁰ O1 Communications Exhibit O10003-C.

⁶¹ O1 Communications Exhibit O10004.

⁶² O1 Communications Exhibit O10005-C.

⁶³ O1 Communications Exhibit O10006-C.

⁶⁴ O1 Communications Exhibit O10007-C.

March 15, 2006;⁶⁵ and (8) O1 Communications board resolution adopting S Corp election, dated February 28, 2010.⁶⁶

When assessing Vaya's separate corporate existence, we find Vaya's transfer of control to O1 Holding Company in 2017 instructive. While separate entities must apply for a transfer of control using Pub. Util. Code Section 854, Vaya transferred control to O1 Holding Company by submitting an advice letter to the Commission's Communication's Division on February 3, 2017 pursuant to General Order (GO) 96-B, Telecommunications Rule 7.2(4) as a pro forma change of control.⁶⁷ This process may be used when transfer of control amounts to an internal reorganization rather than a transfer to a separate entity. The Commission's Communication Division accepted Vaya's GO 96 request on March 6, 2017,⁶⁸ and therefore has acknowledged and treated Vaya and O1 Holding Company as the same legal entity since that time.

This Decision also takes official notice that on February 3, 2017, O1 Communications transferred control of O1 Communications to O1 Holding Company through a pro forma change of control in O1 Communications Advice Letter 86 pursuant to GO 96-B, Telecommunications Rule 7.2(4). The Commission's Communication Division accepted O1 Communication's GO 96 request on March 6, 2017, with the Commission's Communications Division similarly acknowledging and treating O1 Holding Company and O1 Communications as the same legal entity since that time.

⁶⁵ O1 Communications Exhibit O10008-C.

⁶⁶ O1 Communications Exhibit O10009-C.

⁶⁷ Vaya Motion for Reconsideration of ALJ's Ruling Admitting One Exhibit into the Evidentiary Record; Granting AT&T California's Motion to Compel, in Part; and Requiring Joinder of Additional Parties (Oct. 13, 2021) at 13.

⁶⁸ *Ibid.*

Upon review, we find the corporate formalities observed by Vaya and O1 Communications prior to 2017 weigh in favor of a finding of a separate legal existence, while the formation of O1 Holding Company as an internal reorganization for both Vaya and O1 Communications under a common parent weigh against the finding of a separate legal existence between the three entities: Vaya, O1 Communications, and O1 Holding Company.

**6.1.6. Concentrating the Liability of
O1 Communications' Internet Protocol (IP)
Termination Services for Third-Party VoIP
Providers**

As Vaya readily admits, Vaya was set up and operated with the expectation that its enterprise would create liability. O1 Communications was formed in 1988 to “provide transport services to other carriers to pick up their telecommunications and IP-based traffic and carry it to a termination hand-off location.”⁶⁹ The problem, according to Vaya, was that “the law for IP termination rates was highly unsettled for a decade, which led to a substantial number of industry disputes, including the one between Vaya and [AT&T California], which resulted in O1 Communications prohibition from terminating IP traffic under its ICA with AT&T California.”⁷⁰ Vaya explains that:

By segregating IP-based traffic to one entity for termination services into a separate entity (Vaya) it was less likely that [O1 Communications] would become involved in litigation over IP termination since it did not terminate IP traffic.⁷¹

⁶⁹ Vaya Exhibit VA0004 at 3.

⁷⁰ Vaya Surreply at 9-10; Vaya Exhibit VA0004 at 3.

⁷¹ Vaya Exhibit VA0004 at 3.

This decision finds the admission that O1 Communications formed Vaya to concentrate the liability of O1 Communications' IP termination services weighs in favor of extending Vaya's liability to O1 Communications.

6.2. Assessing Inequitable Results

Finding that Vaya does not have a separate legal existence from O1 Holding Company and O1 Communications, we turn to a review of whether an inequitable result would occur if the Commission did not extend Vaya's liability to either O1 Communication, O1 Holding Company, or both. In prior decisions, the Commission has determined that an inequitable result would follow if the corporate veil were not pierced, including evasion of the law,⁷² promotion of fraud or injustice by maintaining the existence of separate corporations,⁷³ and omission of information required by the Commission.⁷⁴ "[I]t is not sufficient to merely show that a creditor will remain unsatisfied if the corporate veil is not pierced, and thus set up such an unhappy circumstance as proof of an 'inequitable result.'"⁷⁵

In this decision, we find that an inequitable result would be achieved if Vaya's liabilities for breaching its ICA were not extended to O1 Communications, who operated Vaya's telecommunications services in breach of the ICA. We also find that an inequitable result would be achieved if Vaya's liabilities did not extend to O1 Holding Company, who undercapitalized Vaya to make it judgement-proof while it continued to operate

⁷² D.99-04-033 at 15.

⁷³ D.03-01-079 at 16.

⁷⁴ D.16-01-014 at 221-22.

⁷⁵ *Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal. App. 2d 825, 842.

O1 Communications, and by extension Vaya, with the intent of continuing to breach the terms of Vaya's ICA with AT&T California.

6.2.1. Intent to Avoid Switched Access Charges in the ICA is a Wrongful Act

Vaya argues that a finding of an inequitable result requires a showing that there was an integration of a business purpose between a Vaya and O1 Holding Company and O1 Communications for the purpose of carrying out fraud or a misdeed.⁷⁶ Vaya states that there was no fraud because Vaya was created for a legitimate business purpose, which was to terminate IP-based traffic (a service which was not allowed under O1 Communications' ICA).⁷⁷

Vaya argues no fraud was committed because AT&T California was not aware that Vaya was actually doing business with O1 Communications or O1 Holding company when it signed the ICA with Vaya.⁷⁸ Vaya faults AT&T California for becoming aware of Vaya's connection to O1 Communications and O1 Holding Company's connection to Vaya through the course of this complaint, contending that Vaya's affiliates could not have misled AT&T California into believing they would satisfy Vaya's debts at the time Vaya sent traffic to AT&T California.⁷⁹ Vaya suggests that AT&T California's failure to name O1 Communication's or O1 Holding Company in its complaint now precludes AT&T California from any expectation of recovery from Vaya's affiliates.⁸⁰ According to Vaya, AT&T is simply an unsatisfied creditor in a breach of

⁷⁶ Vaya Surreply at 9.

⁷⁷ Vaya Surreply at 10.

⁷⁸ Vaya Surreply at 9.

⁷⁹ Vaya Surreply at 9.

⁸⁰ Vaya Surreply at 9.

contract case.⁸¹ Citing *Cascade Energy & Metals Corp. v. Banks*, Vaya argues that the ICA is a consensual transaction between Vaya and AT&T California, wherein AT&T California “had the ability to protect its interests by demanding a deposit from Vaya to cover the disputed charges” but failed to do so.⁸²

AT&T California, on the other hand, contends that it “would be clear injustice” to find Vaya and O1 Communications are not a single business enterprise because it would “make a mockery of the Commission’s ability to enforce its own orders or adequately regulate telecommunications companies operating under its jurisdiction.”⁸³ AT&T California argues Vaya does so by setting up and operating a new CLEC “in a way that pushes the envelope on the law and its contract terms,” underpaying AT&T California, forcing AT&T California (who cannot terminate the ICA without Commission approval) to come before the Commission to seek recompense through costly litigation, and then avoid its reparations award and Commission penalty when AT&T California prevails.⁸⁴

AT&T California states:

This entire proceeding has been pending in one form or another since well before 2014. Through more than eight years of litigation at this Commission, through myriad proceedings and filings, Vaya has forced [AT&T California] to expend countless [AT&T California] employee and attorney time, and has consumed equally copious Commission resources, all in an attempt to advance Vaya’s completely unsuccessful interpretations of its ICA term and the law. Vaya carried out these activities

⁸¹ Vaya Surreply at 12.

⁸² Vaya Surreply at 12.

⁸³ AT&T California Response to Surreply at 16.

⁸⁴ AT&T California Response to Surreply at 16.

as part of its expressed business plan (a plan devised by the owners and operators of O1 Communications, Inc.) while at the same time completely intertwining its business and telecom activities with those of O1 Communications.⁸⁵

We agree with AT&T California that it would be inequitable to not pierce Vaya's corporate veil. A wrongful act is sufficient for finding an inequitable request, and actual fraud is not a required showing to extend Vaya's liability.⁸⁶ The Commission already found Vaya committed a wrongful act by misrouting interLATA calls in D.19-08-028. Vaya interconnects with AT&T California pursuant to the authority granted by its CPCN, as granted in D.09-01-012, issued on January 30, 2009. When the Commission issues a CPCN to a Competitive Local Exchange Carrier, such as Vaya, the CPCN grants a right for the CLEC to interconnect with an ILEC such as AT&T California. Vaya's right to interconnect creates an obligation for AT&T California to interconnect with Vaya through an ICA, which is approved by the Commission. As a regulated utility, Vaya's legitimate business purpose cannot include deliberately operating in a manner that circumvents the requirements of its ICA terms. Though Vaya justifies its breach of AT&T California's ICA as "an industry-wide, legitimate dispute about termination rates for IP based traffic,"⁸⁷ the Commission has already denied Vaya's request to compensate AT&T California using intercarrier compensation rates rather than switched access charges in D.14-01-006, three years before AT&T California initiated the complaint in this proceeding.⁸⁸

⁸⁵ AT&T California Response to Surreply at 2.

⁸⁶ *Pan Pacific Sash & Door Co. v. Greendale Park, Inc.*, 166 Cal. App. 2d 652, 659-660.

⁸⁷ Vaya Surreply (Dec. 31, 2021) at 11.

⁸⁸ AT&T California Exhibit ATT-06C at 1-2; Complaint at 1-6.

To address the extent of Vaya's continued breach of the ICA, we briefly review AT&T California's prior litigation with O1 Communications and Vaya. AT&T California and O1 Communications were in a prior dispute related to compensation for switch access charges, which the parties resolved through a settlement in 2010.⁸⁹ Vaya and AT&T California signed an ICA on June 19, 2009.⁹⁰ Soon thereafter, Vaya filed a complaint, Case 10-12-001, against AT&T California, on December 3, 2010, asserting AT&T California "improperly assessed switched access charges on VoIP traffic Vaya deliver to [AT&T California] for termination and on certain transit, including VoIP traffic."⁹¹ On February 17, 2022, AT&T California filed C.11-02-015 against Vaya, stating Vaya improperly delivered interLATA traffic to AT&T California over local interconnection trunks in violation of the parties' ICA.⁹² In D.14-01-006, the Commission resolved the dispute regarding Vaya's routing of interLATA traffic routing in consolidated cases C.10-12-001 and C.11-02-015 in AT&T California's favor and required Vaya to cease delivering interLATA traffic over local interconnection trunks and compensate AT&T California at switched access rates for all interLATA called delivered by Vaya to AT&T California.⁹³

Vaya continued to misroute interLATA calls after D.14-01-006. In February 2014, AT&T California asked for injunctive relief to enforce the Commission's orders in D.14-01-006.⁹⁴ In June 2015, the parties reach a settlement

⁸⁹ AT&T California Exhibit ATT-06C at 2.

⁹⁰ Vaya Exhibit VA0003; D.19-08-029 at 4.

⁹¹ D.19-08-029 at 5, *citing* D.14-01-006 at 4.

⁹² D.19-08-028 at 5.

⁹³ D.14-01-006 at 21-22 (OPs 1, 3).

⁹⁴ AT&T California Opening Brief (Jun. 8, 2018) at 3.

and filed a joint motion to dismiss the proceeding.⁹⁵ However, Vaya continued to misroute interLATA traffic to avoiding paying switched access charges required by its interconnection agreement and AT&T California brought the instant complaint to the Commission on September 29, 2017. In this complaint, the Commission found Vaya liable for switch access charges owed as a result of misrouting interLATA calls, this time through meet point trunks.⁹⁶

The Commission has a responsibility for holding CLECs accountable, which can only be achieved when the CLEC license holder corresponds to the owner and operator of the telecommunications services. We accomplish this today by piercing Vaya's corporate veil and holding O1 Holding Company and O1 Communications jointly liable for Vaya's obligations in D.20-09-029.

6.2.2. Vaya's Undercapitalization

Inadequate capitalization is sufficient to satisfy the requirement of inequity for a parent corporation operated as a unitary enterprise. The California Supreme Court has held, "If the capital is illusory or trifling compared with the business to be done and the risks of loss, this is a ground for denying the separate-entity privilege."⁹⁷ In this case, Vaya's capital became illusory after the June 2015 settlement agreement with AT&T California when Vaya ceased all direct bank account activity and later underwent an internal reorganization as a subsidiary of O1 Holding Company. There are sufficient grounds for holding O1 Holding Company liable for Vaya debts because the reorganization was intended to further shield O1 Communications from liability as it operated Vaya

⁹⁵ Complaint C.17-09-023 at 6; D.15-06-039.

⁹⁶ D.19-08-028.

⁹⁷ *Automotriz del Golfo de Calif. S.A. de C.V. v. Resnick* (1957) 47 Cal.2d 792, 797.

in a manner that misrouted interLATA traffic, in breach of its settlement agreement with AT&T California.

Vaya cites to *Pasternack v. McFarland*, for the proposition that a court may decline to impose alter ego liability on a company, even one that was undercapitalized and did not reserve any funds for contingent liabilities, when the company met its obligations to vendors and where a “reasonable businessperson could not have predicted the massive litigation that followed a project and would not have provided for a contingency to cover the plaintiff’s claims. Vaya likens its own position to the defendant in *McFarland*, stating that it similarly was adequately capitalized for most of its existence and met its obligations to vendors prior to the catastrophic award in D.20-09-029.⁹⁸

We do not find *Pasternak* analogous to Vaya’s circumstances. Unlike the business in *Pasternak*, Vaya could reasonably predict that its continued misrouting of interLATA calls would lead to a large judgement, as O1 Communications’ similarly-sized liability to AT&T California in 2010⁹⁹ was the direct cause of Vaya’s formation, for the purpose of concentrating O1 Communications’ future liability.

**6.3. Vaya’s Compliance Obligations Pursuant to
D.20-09-029 Should Extend to
O1 Communications and O1 Holding Company**

This decision also finds that Vaya’s liabilities pursuant to D.20-09-029 should extend to O1 Holding Company and O1 Communications after weighing factors related to assessing Vaya’s separate legal existence. While Vaya’s maintenance of corporate formalities prior to 2015 weighs in favor of a separate

⁹⁸ Vaya Surreply at 17.

⁹⁹ AT&T California Exhibit ATT-06C at 2.

legal existence, it is outweighed by the following factors which weigh against a finding of a separate corporate existence, including the following:

(1) maintenance of identical officers, corporate office location, representation by counsel; (2) Vaya's undercapitalization; (3) Vaya's comingling of funds with O1 Communications; (4) control and operation of Vaya's IP termination by O1 Communications; (5) O1 Holding Company's control of Vaya and O1 Communications CPCNs as an internal company reorganization; and (6) creation of Vaya for the purpose of concentrating O1 Communication's liability for IP termination. This decision also finds that it would be inequitable for O1 Communications and O1 Holding to avoid Vaya's liabilities, which accrued as a result of an intentional breach of Vaya and AT&T California's ICA.

Vaya argues that it is unable to pay either the amount owed to AT&T California, or the penalty amount assessed in D.20-09-029.¹⁰⁰ However, this instant decision found Vaya was intentionally undercapitalized by routinely balancing its expenses with its capital prior to 2016, and then its finances were completely comingled with its affiliates after 2016. Therefore, it is appropriate to look at the financial documents of Vaya's affiliates, which shows they were profitable and could support payment of the amount assessed.¹⁰¹

As discussed above, we find Vaya, O1 Communications, and O1 Holding Company jointly liable for Vaya's obligations pursuant to the D.20-09-029. This decision orders O1 Communications and/or O1 Holding Company to pay Vaya's obligations pursuant to D.20-09-029 within 60 days of the issuance date of this decision.

¹⁰⁰ Vaya Verified Response to OSC (Apr. 9, 2021) at 1.

7. Terminating Vaya's License and Other Procedural Matters

No party disputes that Vaya failed to pay the reparations or penalty assessed in D.20-09-029. Vaya shows intent to continue noncompliance with D.20-09-029 by arguing it has no money to pay reparations or penalties, indicating that it has ceased all operations, and requesting to surrender its license in an advice letter to Communications Division, dated November 30, 3020.¹⁰² For Vaya's noncompliance with the Commission's orders, we reject Vaya's request to surrender its CPCN and instead revoke the CPCN, effective 60 days after the issuance date of this decision.

Vaya's officers and all persons who have held more than 10 percent interest in Vaya must disclose the termination of Vaya's CPCN through this decision in any future application for any registration or a certificate of public convenience and necessity to provide telecommunications services submitted to the Commission.

In addition, all rulings of the assigned ALJ and assigned Commissioner are affirmed. All motions not otherwise addressed during the course of this proceeding are denied. This decision should not preclude AT&T California from pursuing discovery or seeking relief to enforce its rights under the reparations award.

8. Rule 1.1 Violation

Rule 1.1 requires "[a]ny person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission . . . never to mislead the Commission or its staff by an artifice or false statement of fact or law."

¹⁰² Vaya AL-7.

The Amended Scoping Memo identified that Brad Jenkins's declaration, which stated that Vaya filed its own state and federal tax returns,¹⁰³ was false and in violation of Rule 1.1. Vaya's production of joint tax returns for 2017-2019 was directly contrary to Brad Jenkins's declaration.

In response, Vaya, O1 Communications, and O1 Holding (collectively, the Vaya Affiliates) jointly argue that "the Commission should not find that a statement violates Rule 1.1 merely because it was ambiguous or could have been clearer."¹⁰⁴ They contend that Mr. Jenkins is "a novice expert witness on topics outside of his day-to-day responsibilities and that covered a long period of time during which circumstances changed."¹⁰⁵

The Vaya affiliates consider the Commission's reasoning in D.01-11-017, *Sawaya v. MCI WorldCom*, analogous to what they describe as Mr. Jenkins's ambiguous statements. In D.01-11-017, Sawaya alleged WorldCom committed a Rule 1.1 violation for asserting that it had paid Sawaya twice. The Commission determined that WorldCom had erroneously sent Sawaya two checks for the same refund, after presuming the first check was misdirected and resending payment. Sawaya had attempted to cash both checks but was prevented from cashing the first check because WorldCom put a stop payment order on it prior to sending the second check. The Commission found that WorldCom's statement that it had paid Sawaya twice was ambiguous and declined to find WorldCom had misled the Commission. Similarly, Vaya argues that Brad Jenkins's statement that Vaya filed its own state and federal tax returns was true, with

¹⁰³ Vaya, Verified Response to OSC, Attach. A (Public Redacted Declaration of Brad Jenkins in Support of Vaya Telecom, Inc. (U-7122-C Response to OSC) at 2.

¹⁰⁴ Joint Response to Amended OSC (Nov. 21, 2021) at 8-9.

¹⁰⁵ Joint Response to Amended OSC (Nov. 21, 2021) at 9.

respect to filings prior to 2017, but ambiguous for filings from 2017 going forward.

In this case, the Commission finds that Brad Jenkins's statement regarding Vaya's filing of separate tax returns was false, not ambiguous. The assigned ALJ asked Brad Jenkins to provide Vaya's three most recent tax returns, from 2017 to 2019, none of which were filed separately.¹⁰⁶ There was no ambiguity about Vaya's filing practice related to the ALJ's request.

The Amended Scoping Memo also identified Vaya's assertions that O1 Holding Company is a separate entity false and misleading in violation of Rule 1.1.¹⁰⁷ Vaya should have disclosed its transfer of control to O1 Holding Company in its initial declaration. Rather, O1 Holding Company's relationship to Vaya became apparent when Vaya submitted its joint tax returns. Though O1 Holding continued to maintain that was a separate entity not subject to the Commission's jurisdiction, its subsequent disclosure of its indirect transfer of control of Vaya to O1 Holding Company in 2017 directly contradicts this argument. The Commission's approval of this indirect transfer of control of Vaya's CPCN obligations to O1 Holding Company is based on this transfer occurring as an internal reorganization of Vaya and O1 Holding Company. The transfer of authority also transfers Vaya's CPCN obligations to O1 Holding Company and subjects O1 Holding Company to the Commission's jurisdiction.

Rather than truthfully explaining Vaya's corporate structure and operations, Brad Jenkins misrepresented them and was forced to amend his testimony as his statements were proven to be untrue. In the initial declaration,

¹⁰⁶ RT 55:4-18.

¹⁰⁷ AT&T California Exhibit ATT-04-C.

Brad Jenkins asserted that Vaya was a separate and distinct corporate entity.¹⁰⁸ In the supplemental declaration, Brad Jenkins acknowledged that Vaya and O1 Communications shared resources, including administrative and management services, equipment, office space and other services through an administrative services agreement.¹⁰⁹ In a subsequent declaration, Brad Jenkins admitted that Vaya and O1 Communications' ASA had not been in effect for a number of years.¹¹⁰ Only after several declarations, Brad Jenkins admitted that Vaya was not a separate and distinct entity, but a subsidiary of O1 Holding Company since 2017, as was also true for O1 Communications.¹¹¹

Finally, the Amended Scoping Memo found that Brad Jenkins's prior statements that, "during its corporate life, Vaya was adequately capitalized to operate as a telecommunications carrier and pay its bills as they came due"¹¹² proved to be false and misleading when Vaya produced three-years of bank statements from an idle account¹¹³ in response to the assigned ALJ's request for verification of Vaya's financial position. Vaya's production of bank statements, which did not plausibly support its business operations,¹¹⁴ indicated that Brad Jenkins's prior statement was also misleading in violation of Rule 1.1.

In their response to the Amended OSC, the Vaya affiliates argued that Brad Jenkins's statements indicating that Vaya was sufficiently capitalized were

¹⁰⁸ Vaya Exhibit VA-0001P, Attach. 1 at 10-11.

¹⁰⁹ Vaya Exhibit VA-0004 at 4.

¹¹⁰ Vaya Exhibit VA-00026C at 4.

¹¹¹ Vaya Exhibit VA-0027 at 3.

¹¹² Vaya, Verified Response to OSC, Attach. A (Public Redacted Declaration of Brad Jenkins in Support of Vaya Telecom, Inc. (U-7122-C Response to OSC) at 2.

¹¹³ AT&T California Exhibit ATT-04-C.

¹¹⁴ AT&T California Exhibit ATT-08-C.

truthful and that it was accurate that Vaya maintained enough money to cover its foreseeable day-to-day expenses.¹¹⁵

The Commission is not persuaded by the Vaya affiliates' response to the Amended Order to Show Cause. Vaya had no bank account after 2016 and it was an impossibility that Vaya itself could pay any expense after this date. When a statement rises to the level of impossibility, the Commission may consider the matter to be false and misleading in violation of Rule 1.1.

Having determined that Vaya violated Rule 1.1, we turn to whether any penalty should be assessed for the Rule 1.1 violation. Section 2107 provides that [a]ny public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the Commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than one-hundred thousand dollars (\$100,000) for each offense.

Brad Jenkins misled the Commission in violation of Rule 1.1. The Commission requires strict compliance with its rules. Therefore, it is appropriate to impose a fine pursuant to Section 2107.

D.98-12-075 sets forth the five factors for the Commission to consider when imposing a fine upon a utility, which are: (1) the severity of the offense, (2) the conduct of the utility, (3) the financial resources of the utility, (4) the totality of the circumstances, and (5) the role of precedent. The purpose of a fine is to go beyond restitution to the victim and to effectively deter further violations by the perpetrator or others.

¹¹⁵ Joint Response to Amended OSC (Nov. 21, 2021) at 11.

The first factor to be considered when imposing a fine upon a utility pursuant to D.98-12-075 is the severity of the offense, which encompasses four sub-factors: (1) physical harm, (2) economic harm, (3) harm to the regulatory process, and (4) the number and scope of violations.

Brad Jenkins provided false and misleading information to the Commission in response to the OSC. While no physical harm or economic harm is indicated, we find that there is harm to the regulatory process. D.98-12-075 provides that a “high level of severity” will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements.

When the Commission transfers control of a CPCN, the transferee gains the right to operate pursuant to the CPCN but also agrees to take on the regulatory responsibility pursuant to the CPCN. Rather than acknowledging its responsibility for Vaya, Brad Jenkins omitted Vaya’s connection to O1 Holding Company, which obtained indirect control of Vaya’s CPCN obligations. Brad Jenkins’s false and misleading statements with regard to Vaya’s independent operations harm the Commission’s regulatory process for CPCNs. Brad Jenkins cannot rely on Vaya’s corporate form to evade O1 Holding Company’s regulatory responsibilities pursuant to Vaya’s CPCN.

Relatedly, when the Commission grants a CPCN, the CPCN holder agrees to operate in California. Brad Jenkins’s statements were revealed to be false, showing that O1 Communications operated Vaya. Brad Jenkins’s false statement regarding Vaya’s independent operations hurt the regulatory process because they undermined the basis of the Commission’s grant of Vaya’s CPCN, which is to enable Vaya, as an independent entity, to operate in California. Brad Jenkins

cannot rely on Vaya's corporate form to evade O1 Communications' regulatory obligations for operating in California.

The final consideration for the severity of the offense is the number and scope of violations. A widespread violation that affects many customers is more severe than one that is limited in scope. The Rule 1.1 violation was made after Vaya discontinued operations. Therefore, no third-party customers were directly affected by the Rule 1.1 violation.

The second factor to be considered when imposing a fine upon a utility pursuant to D.98-12-075 is the conduct of the utility, which focuses on the utility's actions in preventing, detecting, disclosing and rectifying the violation. As discussed above, Brad Jenkins took actions to amend his false and misleading testimony by providing supplemental and amended testimony.

The third factor to be considered when imposing a fine upon a utility pursuant to D.98-12-075 is the financial resources of the utility. The law authorizes a penalty of "not less than \$500 or more than \$100,000 for each offense." The law allows a penalty based on the number of instances of wrongdoing. We take the financial resources of O1 Holding Company into account, as they also incorporate the earnings of both O1 Communications and Vaya, and find they have adequate financial resources to pay the fine.

The fourth factor is the totality of the circumstances. In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of the case. In assessing the unique facts of each case, the Commission stated that it would consider both the degree of wrongdoing and the public interest. The facts in this case indicate that the degree of wrongdoing was serious and continuous. Vaya showed little respect for the Commission's authority to regulate its services, and no intent to be accountable for its obligations to AT&T California under its ICA.

The fifth factor to be considered when imposing a fine upon a utility pursuant to D.98-12-075 is whether the fine or penalty is reasonable in light of prior Commission decisions. In D.98-12-075, the Commission held that any decision which imposes a fine should: (1) address previous decisions that involve reasonably comparable factual circumstances and (2) explain any substantial differences in outcome. The Commission has assessed penalties for Rule 1.1. violations by telecommunications carriers who provide false or misleading information related to licensing requirements, which as relevant to the penalty in this case. In D.19-12-041, the Commission issued a penalty of \$1,289,596 on eight OSC respondents for violating Rule 1.1. for failure to disclose, within the application filed, the full amount of Rural Telephone Bank stock dissolution proceeds by artifice meant to mislead the Commission. In D.19-10-033, the Commission issued a penalty of \$250,000, adopting a settlement for a carrier's slamming-related activities, and providing false information to Commission staff and false statements in response to Commission staff data requests. In D.16-10-030, the Commission approved a settlement for \$15,000 penalty for CPCN applicant's failure to disclose a prior adverse regulatory action by FERC in its CPCN application, noting that the failure to disclose was neither intentional nor concealed, and the applicant amended its application to address the violation. In D.13-09-001, the Commission assessed a penalty of \$100,000 for a CPCN holder who misrepresented their ability to make payments called for in a settlement in violation of Rule 1.1. In D.09-06-013, the Commission adopted a settlement of \$10,000 for a CPCN applicant's Rule 1.1 for omitted relevant material and making erroneous representations about the regulatory history of its

subsidiary. Having reviewed the previous decisions with reasonably comparable factual circumstances, we determine that a penalty of \$12,000 is reasonable and consistent with a penalty for misrepresentations that did not harm otherwise harm a telecommunications carrier's customers.

O1 Communications and O1 Holding Company shall be jointly liable for payment of the penalty imposed herein for violating Rule 1.1.

9. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Zita Kline is the assigned Administrative Law Judge and presiding officer in this proceeding.

Findings of Fact

1. The Commission granted a CPCN to Option One Communications in D.98-09-066 on September 17, 1988.
2. Option One Communications changed its name to O1 Communications in October 1999.
3. O1 Communications is a sister company and affiliate of Vaya.
4. O1 Holding Company is the parent corporation of both O1 Communications and Vaya.
5. Vaya was created to terminate IP traffic, which O1 Communications was not allowed to do under its ICA with AT&T California.
6. Vaya filed a CPCN application with the Commission on July 2, 2008.
7. The Commission granted Vaya a CPCPN in D.19-01-012 on January 30, 2009.
8. On June 19, 2009, Vaya and AT&T California signed an ICA.
9. On December 3, 2010, Vaya filed C.10-12-001, against AT&T California, asserting AT&T California "improperly assessed switched access charges on

VoIP traffic Vaya deliver to [AT&T California] for termination and on certain transit, including VoIP traffic.”¹¹⁶

10. On February 17, 2011, AT&T California filed C.11-02-015 against Vaya, stating Vaya improperly delivered interLATA traffic to AT&T California over local interconnection trunks in violation of the parties’ ICA.

11. In D.14-01-006, the Commission found Vaya in breach of its ICA for misrouting interLATA traffic through local interconnection trunks, resolving consolidated cases C.10-12-001 and C.11-02-015.

12. Vaya continued to misroute interLATA calls after issuance of D.14-01-006.

13. AT&T California asked for injunctive relief to enforce the Commission’s orders in D.14-01-006.

14. In June 2015, the parties reached a settlement in C.10-12-001 *et al.* and filed a joint motion to dismiss the proceeding.

15. On September 29, 2017, AT&T California filed the instant complaint, asserting that Vaya was in breach of its ICA for misrouting interLATA traffic subsequent to the settlement agreement between AT&T California and Vaya.

16. In D.19-08-028, the Commission found Vaya was in breach of its ICA for misrouting interLATA traffic through meet point trunks during the Record Period.

17. In D.20-09-029, the Commission ordered Vaya to pay \$3,364,692 in reparations to AT&T California and \$40,000 in penalties to the Commission’s General Fund.

18. Vaya requested to terminate its CPCN license by AL no. 7 to the Commission’s Communications Division, dated November 30, 2020.

¹¹⁶ D.19-08-029 at 5, *citing* D.14-01-006 at 4.

19. To date, Vaya has not paid the \$3,364,692 in reparations to AT&T California ordered in D.20-09-029.

20. To date, Vaya has not paid the \$40,000 in penalties to the Commission's General Fund ordered in D.20-09-029.

21. Vaya shared corporate officers Brad Jenkins and Jim Beausoleil with O1 Communications and O1 Holding Company during the Record Period.

22. Vaya, O1 Communications, and O1 Holding Company were represented by the same counsel during the OSC.

23. O1 Communications' counsel represented Vaya during Phase 1 and Phase 2 of the C.17-09-023.

24. Vaya shared corporate offices with O1 Communications and O1 Holding Company during the Record Period.

25. The financial documents Vaya provided only show active balance transfers between 2010 and 2015, with a few minimal but mostly no transactions occurring after 2015.

26. From inception through 2016, Vaya's finances were kept at a minimum level so that it could only meet its monthly obligations.

27. Vaya compensated O1 Communications' services through an offset arrangement.

28. Vaya did not maintain a separate bank account after December 2016.

29. Vaya comingled funds with O1 Communications after 2015, when Vaya had no bank account.

30. Vaya provided evidence of only three potential payments during 2008 to 2016 which could serve as evidence of payment under its ASA with O1 Communications.

31. Vaya provided one invoice from December 14, 2014 as evidence of its adherence to the ASA terms.

32. Vaya had no employees.

33. James Mertz, an O1 Communications, provided testimony regarding Vaya's operations during Phase 1 and Phase 2 of this complaint proceeding.

34. Vaya was operated by O1 Holding Company and its affiliates.

35. Vaya was undercapitalized during the Record Period.

36. Vaya comingled funds with its O1 Holding Company and O1 Communications.

37. Vaya was controlled by O1 Communications during the Record Period. O1 Communications and Vaya maintained certain corporate formalities.

38. Vaya operations concentrated O1 Communications' and O1 Holding Company's liabilities for terminating IP VoIP traffic.

39. Vaya transferred control to O1 Holding Company through a pro forma change of control in Vaya Advice Letter 6 pursuant to General Order 96-B, Telecommunications Rule 7.2(4).

40. The Commission's Communication Division accepted Vaya's GO 96-B pro forma transfer of control request on March 6, 2017.

41. O1 Communications transferred control to O1 Holding Company through a pro forma transfer in O1 Communications Advice Letter 86 pursuant to General Order 96-B, Telecommunications Rule 7.2(4).

42. The Commission's Communication Division accepted O1 Communication's GO 96-B pro forma transfer of control request on March 6, 2017.

43. Vaya was set up to concentrate liability for O1 Communications' IP termination services.

44. Vaya has no end-user customers and provided VoIP termination services to third party VoIP providers.

45. Vaya's breach of its ICA with AT&T California extended to customers of all third-party providers using Vaya's termination services.

46. Vaya filed its own tax return in 2016.

47. O1 Holding Company's tax returns show that Vaya did not file its own tax returns from 2017-2019.

48. Vaya had no employees and operated through O1 Communications.

49. Vaya's assertions with regard to its filing separate state and federal tax returns was false and misleading.

50. Vaya's statements with regard to its operations pursuant to its ASA were false and misleading.

51. Vaya's statements with regard to Vaya's ability to pay bills as they came due was false and misleading.

52. Vaya's initial omission of its 2017 transfer of control to O1 Holding Company was false and misleading.

53. O1 Communication's initial omission of its transfer of control to O1 Holding Company was false and misleading.

54. The Certificate of Public Convenience and Necessity license of Vaya Telecom, Incorporated (U7122C) should be revoked. O1 Holding Company is an alter ego of Vaya.

55. O1 Communications and Vaya were operated as a single business enterprise.

Conclusions of Law

1. Under the Telecommunications Act of 1996, the Commission has jurisdiction to arbitrate, interpret, and enforce interconnection disputes, including the contractual charges arising out of ICAs.
2. The Commission has jurisdiction to enforce the Commission's decisions through an OSC pursuant to Public Utilities Code Sections 701, 2107, 2108, and 2113.
3. The Commission has the authority to pierce the corporate veil and apply the alter ego doctrine or the single business enterprise rule, when the facts support it, to secure equitable restitution to victims.
4. The Commission engages in the same analysis as California courts when deciding to pierce the corporate veil.
5. There is a unity of interest and ownership between Vaya, O1 Holding Company, and O1 Communications.
6. It is not necessary to find that the comingling of funds was illegitimate when extending Vaya's liability.
7. Vaya was in breach of its ICA with AT&T California for misrouting interLATA traffic over meet point trunks during the Record Period.
8. Failure to extend Vaya's liabilities to O1 Holding Company and O1 Communications would be inequitable for both AT&T California and the Commission because Vaya committed a wrongful act by breaching the terms of its ICA and Vaya was deliberately undercapitalized to avoid penalty or restitution claims.
9. Vaya's officers and all persons who have held more than 10 percent interest in Vaya should disclose the revocation of Vaya's CPCN through this decision in any future application for any registration or a certificate of public

convenience and necessity to provide telecommunications services submitted to the Commission.

10. Vaya, O1 Communications, and/or O1 Holding Company should pay the outstanding amount owed under D.20-09-029 within 60 days of the issuance date of this decision.

11. Vaya violated Rule 1.1 during the course of the OSC by providing false and misleading testimony from Brad Jenkins, the CEO of Vaya, O1 Communications, and O1 Holding Company, with regard to Vaya's operations as a corporate entity separate from its affiliates.

12. Vaya should be penalized \$12,000 for violating Rule 1.1.

13. Vaya, O1 Communications, and O1 Holding Company should be jointly liable for payment of the penalty for Vaya's violation of Rule 1.1. within 60 days of the issuance date of this decision.

14. Vaya's license should be revoked 60 days from the issuance date of this decision for failure to comply with Decision 20-09-029.

15. All rulings by the assigned Commissioner and the assigned ALJ should be affirmed.

16. All motions not otherwise addressed during the course of this proceeding should be denied.

17. This decision should not preclude AT&T California from pursuing discovery or seeking relief to enforce its rights under the reparations award.

18. Complaint 17-09-023 should be closed.

O R D E R

IT IS ORDERED that:

1. The Certificate of Public Convenience and Necessity license of Vaya Telecom, Inc. (U7122C) is revoked, effective 60 days after the issuance date of this decision.
2. Vaya Telecom, Inc.'s (Vaya's) officers and all persons who have held more than 10 percent interest in Vaya must disclose the revocation of Vaya's Certificate of Public Convenience and Necessity (CPCN) in any future application for any registration or a CPCN to provide telecommunications services submitted to the California Public Utilities Commission.
3. Vaya Telecom, Inc. (Vaya), O1 Communications, Inc., and O1 Holding Company are jointly liable for Vaya's obligation pursuant to Decision 20-09-029 and must pay the outstanding amounts owed to Pacific Bell Telephone Company doing business as AT&T California and to the California Public Utilities Commission, for deposit into the General Fund, within 60 days of the issuance date of this decision.
4. Vaya Telecom, Inc., O1 Communications, Inc., and O1 Holding Company (Vaya affiliates) are jointly liable for the fine of \$12,000 for violating Rule 1.1. The Vaya affiliates must pay the \$12,000 fine to the California Public Utilities Commission (Commission) for deposit into the General Fund, and shall remit said amount to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102 within 60 days of the issuance date of this decision. The number of this decision shall be included on the face of the check.
5. All rulings by the assigned Commissioner and the assigned Administrative Law Judge are affirmed.

6. All motions not otherwise addressed during the course of this proceeding are denied.

7. This decision does not preclude Pacific Bell Telephone Company doing business as AT&T California from pursuing its claims for reparations in other venues.

8. Case 17-09-023 is closed.

This order is effective today.

Dated _____, at San Francisco, California.